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NEW JERSEY BOARD OF PUBLIC UTILITIES

Courtesy Copy of Adoption

N.J.A.C. 14:3-8.3, General requirement to provide extensions

N.J.A.C. 14:3-8.4, Requirement to put certain extensions underground

N.J.A.C. 14:3-8.8, Exemptions from cost limits on areas not designated for growth

N.J.A.C. 14:3-10.7, Calculating the TRIP charge

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

**General Requirement to Provide Extensions;
Requirement to Put Certain Extensions
Underground; Exemptions from Cost Limits on
Areas Not Designated for Growth; Calculating the
Targeted Revitalization Incentive Program (TRIP)
Charge**

Adopted Amendments: N.J.A.C. 14:3-8.3, 14:3-8.8 and 14:3-10.7

Adopted New Rule: N.J.A.C. 14:3-8.4

Proposed:

December 20, 2004 at 36 N.J.R.
5655(a).

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Adopted: July 6, 2005 By the Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Connie O. Hughes, and Jack Alter, Commissioners.

Filed: _____, 2005 as R. 2004 d. _____, with substantive and technical changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13, 48:2-16, 48:2-27, 48:2-23, 48:5A-36, and 48:5A-10.

BPU Docket Number: AX 04101148 (Companion TO AX03120973)

Effective Date: August 15, 2005

Expiration Date: July 31, 2007

On December 20th, 2004 at 36 N.J.R. 5655(a), the Board of Public Utilities (Board) proposed amendments to its rules for all utilities at N.J.A.C. 14:3-8.3, 14:3-8.8 and 14:3-10.7, as well as a new rule at N.J.A.C. 14:3-8.4. These amendments and the new rule govern the responsibility borne by regulated entities for the costs of certain investments in infrastructure, based upon whether the development is in an area designated for growth under the State Development and Redevelopment Plan (State Plan). A public hearing on the proposal was held on January 11, 2005.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the proposal was held on January 11, 2005 before Lance Miller, Chief of Staff, the Board's designated hearing officer. The Board also accepted written comments on the proposal through February 18, 2005. At the direction of the hearing officer, the transcript and filed written comments were certified directly to the Board for its consideration. Six persons submitted comments, which are summarized below, with the Board's responses. The record is available for review by contacting:

Kristi Izzo, Secretary of the Board
ATTN: Board Docket Number: AX 04101148
Two Gateway Center
Newark, New Jersey 07102

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

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1. Gregory Eisenstark, Public Service Electric and Gas Company (PSE&G)
2. John L. Carley, Rockland Electric Company (RECO)
3. Michael J. Connolly, Jersey Central Power & Lights (JCP&L)
4. Mary Patricia Keefe, Elizabethtown Gas (ETG)
5. Tracy Thayer, New Jersey Natural Gas (NJNG)
6. Sally Cheong, Jersey Central Power & Light (JCP&L)

N.J.A.C. 14:3-8.3 General requirement to provide extensions

1. **COMMENT:** This section contains new language requiring a utility to ensure that potential applicants for main extension receive a copy of the relevant sections of the New Jersey Administrative Code related to Main and Service Extensions (N.J.A.C. 14:3-8 et seq.) In fact, as now drafted, the regulations also require that any subsequent application for an extension include with it a certification from the applicant that a copy of the rules has been received. While we realize the importance of providing customers with the most up-to-date regulations related to Main and Service Extensions, we suggest alternative approaches. These include a choice between providing a copy of the subchapter or a BPU approved pamphlet covering this topic, or a copy of the tariff or placing any pertinent rule information on the application itself, and have full copies of the rule in offices available to applicants. Furthermore, it is suggested that the certification requirement be abandoned, since certification is not required for other Board materials and is overly burdensome. (PSE&G, NJNG, JCP&L, RECO, ETG)

RESPONSE: To effectively implement the Main Extension rules, the Board believes that all applicants for an extension should be made aware of their rights and obligations. The Board proposed the requirement to provide a copy of the rules as a convenience to the companies, so that they would not have to draft separate information pamphlets. In addition, by distributing a copy of these rules, regulated entities will ensure that applicants get consistent and comprehensive information. The Board believes this is important because the rules implement a new program that will be unfamiliar to many customers and applicants for extensions. The Board may in the near future produce a guidance document that could be distributed with or in place of the rules as an executive summary to aid applicants in understanding the rules. But until such time as the Board completes this document, it is crucial that applicants receive a copy of the rules. Requiring certification will provide a simple mechanism to ensure consistent distribution of the subchapter. Further, the Board believes that the certification can be provided in ways that would minimize administrative burdens. For example, regulated entities can simply add one line to their existing agreements to provide extensions indicating that the applicant received a copy of the subchapter. The rules do not require regulated entities to transmit these certifications to the Board.

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N.J.A.C. 14:3-8.4 Requirement to put certain extensions underground

2. **COMMENT:** Section 14:3-8.4(c) (1) should be amended to provide that “The extension is located within, and will serve non-residential development that does not have such service as of {effective date of this rule};...”. This amendment will clarify that the facilities to be made underground must be located within the non-residential development in question. (RECO)

RESPONSE: The goal of this subsection is to provide both applicants and regulated entities with a clear set of requirements so they may easily determine whether an extension of electric or telecommunications service should be made underground or overhead. After reviewing the commenter’s suggested change, it is apparent that this subsection only causes confusion because it imposes two requirements that may be difficult to understand, because this subsection places final discretion with the entities which it is supposed to govern. Further, the commenter’s suggested change would not clarify this situation, but merely add an additional requirement. Accordingly, the Board has removed this subsection from the rules and this should clarify this issue.

3. **COMMENT:** Section 14:3-8.4(c): the non-residential subsection should contain the same provision as the residential subsection regarding the ability of utilities to put high capacity main lines of 4 mega volt amps or greater overhead. (PSE&G, JCP&L)

RESPONSE: The Board agrees that the suggested revisions will more accurately reflect the Board's intent to carry over existing undergrounding provisions, and will bring parity to the residential and non-residential subsections. The commenter's suggested change has been made upon adoption.

4. **COMMENT:** 14:3-8.4(d)(2). This section should be amended to provide that “Both” rather than “Either” of the two identified criteria must be met in order that an extension of electric or telecommunications service shall be made underground. (RECO)

RESPONSE: The Board agrees that a high-capacity main line electric distribution facility with a capacity of 4 megavolt amps or less may always be made overhead, unless the regulated entity chooses to put it underground. Therefore, N.J.A.C. 14:3-8.4(d) 2ii has been moved to new N.J.A.C. 14:3-8.4(c) for clarity. In addition, proposed N.J.A.C. 14:3-8.4(d)2i has been separated into i and ii for easier understanding. Finally, the Board has added

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new language to N.J.A.C. 14:3-8.4(d)1 in order to more clearly delineate where the development in question must be located and the type of service which the development must be lacking in order to meet the requirements contained in the rule.

- 5. COMMENT:** Subsection 14:3-8.4 (d)(2)(i) should be revised to read: “The extension will be placed along streets not already served by overhead facilities.” As a practical matter, we may not know when the streets in question were constructed. Regardless of the date of street construction, the focus should remain on the status of the streets at the time that service is to be extended. The suggested revision is in keeping with the Board’s long standing policy that electric facilities should not be made underground in areas where there are existing overhead facilities. (RECO).

RESPONSE: The commenter's suggested revision is not necessary because N.J.A.C. 14:3-8.4(e) provides the regulated entity with discretion to extend facilities overhead if the lot which will be served abuts an existing street that is already served overhead. However, N.J.A.C. 14:3-8.4(d)2 has been revised on adoption to remove redundancies and reduce confusion.

- 6. COMMENT:** The language used in 14:3-8.4(f) differs from that used in N.J.A.C. 14:5-4.4(a) which reads as follows: “with a minimum increase in the difference in cost between overhead and underground service.” There is no explanation provided regarding this specific change in wording. We are concerned that what appears to be an unnecessary change may be subject to misinterpretation or create customer confusion. We believe that the former language is clearer and, therefore, should be helpful in avoiding unnecessary customer confusion and the potential for complaints. (JCP&L)

RESPONSE: The provision to which the commenter refers (N.J.A.C. 14:5-4.4(a)) contains the same substance as N.J.A.C. 14:3-8.4(f) as adopted. N.J.A.C. 14:5-4.4(a)1 states that an underground extension shall be constructed using "suitable materials" that comply with industry standards that are "reasonable standards designed to implement this rule with a minimum increase in the difference in cost between overhead and underground distribution systems". (emphasis added). The language in the adoption is only slightly different: it states that "Underground service shall be reasonably equivalent to comparable overhead service ... while minimizing the difference in cost between overhead and underground service." This very slight change was made in order to reduce confusion, and the Board believes it accomplishes that goal. Further, the Board added language regarding the distribution of cost between regulated entity and applicant in order to clearly delineate who is responsible for these costs.

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7. **COMMENT:** In N.J.A.C. 14:3-8.4(f), the words, "the cost of the underground service shall be distributed in accordance with N.J.A.C 14:3-8", in conjunction with situations where underground service is not required but where the customer still requests it, create confusion and therefore should be changed or clarified. (JCP&L)

RESPONSE: Upon adoption, N.J.A.C. 14:3-8.4(f) has been changed to make it clear that it is the amount that overhead service would have cost that is allocated according to N.J.A.C. 14:3-8, and that in areas where the regulated entity is not required to provide underground service or in areas where underground service is required, the applicant is responsible for the difference in cost between overhead and underground service. This is consistent with N.J.A.C. 14:3-8.9(d)(3), which provides that the cost of any additional service beyond that which is required by this subchapter shall be paid by the applicant that requests the service.

8. **COMMENT:** N.J.A.C. 14:3-8.4(f) should be changed to specifically address instances where a manhole, conduit system and secondary underground service in an overhead zone are requested or required, that the applicant/customer pay for and install these facilities. (PSE&G)

RESPONSE: The commenter's suggested change is not necessary because the rule already addresses the issue. First, in areas not designated for growth, the costs associated with extending service are the obligation of the applicant/customer under N.J.A.C. 14:3-8.6, so the applicant is already responsible for the cost of the listed items if the extension serves an area not designated for growth. Second, for an area designated for growth, the regulated entity would only be responsible for the cost of these items if the items were required under industry design standards. N.J.A.C 14:3-8.3(e) provides that "a regulated entity shall construct an extension with sufficient capacity to provide safe, adequate, and proper service to customers, in accordance with the regulated entity's and/or the industry's system design standards, even if the applicant requests less capacity." (emphasis added) Therefore, a regulated entity would not be required to provide such things as a manhole, conduit system or secondary underground service unless they are included in the regulated entity's and/or the industry's system design standards. Moreover, N.J.A.C. 14:3-8.9(d)(3) provides "if an applicant requests service that costs more than that which is standard under the regulated entity's and/or the industry's system design standards, ... the regulated entity may charge the applicant or the customer for the extra expense." This means that any facilities beyond those required by industry design standards would be the responsibility of the applicant, not the utility.

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Therefore, this subsection needs no further modification to address the commenter's concerns.

9. **COMMENT:** In 14:3-8.4(h) it is suggested that the cost of installation, as well as removal, of temporary facilities should be paid fully by the applicant. (PSE&G, RECO, JCP&L)

RESPONSE: The Board believes that the cost of removal of temporary facilities is reasonably included in the applicant's total cost, and should be distributed between the regulated entity and the applicant in the same way as the remainder of the extension costs under this subchapter. Accordingly, this slight change has been made to this subsection, which is recodified as N.J.A.C. 14:3-8.4(g), and the language has been revised in order to clear up any confusion concerning who is responsible for the installation and removal of any temporary facilities. The Board does not want the installation and removal of these temporary facilities to be delayed because there is confusion between the regulated entity and the applicant concerning who is responsible for the cost of the installation and removal of these temporary facilities.

10. **COMMENT:** N.J.A.C. 14:3-8.4(j) provides that if either the applicant or the regulated entity requests from the Board a special exemption, or approval of special conditions, the Board may require that the requesting party deposit in escrow an amount up to the estimated difference in cost between underground and overhead service. Requiring such a deposit of certain thinly capitalized applicants no doubt makes sense. Given our financial wherewithal, as well as the fact that it is subject to continuing regulation and oversight by the board, there is no need to require the company to provide such a deposit. This requirement, as it applies to regulated entities, should be deleted from the final version of the proposed rules. (RECO)

RESPONSE: This is a discretionary provision, in which an applicant or regulated entity may request special treatment. Furthermore, the Board also has discretion and may require that the requesting party submit, as part of such request, documentation that the requesting party has deposited in an escrow account an amount up to the estimated difference in cost between underground and overhead service. Considering the discretionary nature of the provision and the probability that the provision will be invoked most often by an applicant and not a regulated entity, the Board has not modified the provision as suggested.

11. **COMMENT:** Subsection N.J.A.C. 14:3-8.4(l) should be revised to require the developer or applicant to provide easements, if they are required, as a condition for joint trenching. (PSE&G)

RESPONSE: The Board appreciates the commenter's concerns, but the Board's rules already contain a provision which addresses this issue. N.J.A.C. 14:3-8.3(c) stipulates that a regulated entity "is not required to

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construct, own, operate or maintain an extension on any property unless the regulated entity is legally authorized to do so, for example through an easement or right of way.” Thus, if a developer or applicant fail to provide a necessary easement, the regulated entity is not obligated to construct the extension. Accordingly, the Board has deleted the proposed subsection because N.J.A.C. 14:3-8.3(c) provides sufficient guidance concerning this issue. In addition, the Board has moved proposed N.J.A.C. 14:3-8.4(g) to recodified N.J.A.C. 14:3-8.4(k) in order to ensure that regulated entities install any components above ground, as needed, in order to ensure that these extensions are done safely.

N.J.A.C. 14:3-8.8 Exemptions from cost limits on areas not designated for growth

12. COMMENT: We fully support the exemption allowing conversion activity in all areas of the State. However, we recommend that the BPU reconsider the current language in N.J.A.C. 14:3-8.8 that limits conversions activity to a “...structure...(that) that was built and occupied at least 15 years prior to the date of application for the extension.” Initially, the 15-year term included in this version of the regulation presents administrative difficulties for all parties since a gas company is not easily able to determine the actual date of construction. Secondly, a gas company has no way to determine if, in fact, the subject structure has been occupied at all times during the required time period. It is also suggested that the exemption should apply to all extensions of natural gas service for which the local distribution company need only install a service line and/or meter between an existing gas distribution main and the customer’s premises. (NJNG, ETG, PSE&G).

RESPONSE: The commenter suggests that the Board is limiting conversions; however this subchapter does not limit conversions themselves, but limits the gas company’s authority to pay for a conversion. The Board is concerned that the exemptions do not become so broad that the subchapter is undermined. This exemption is intended to ensure that no person “games” the integrity of the system. Without this limit, a builder could build a new development in an area not designated for growth, then immediately use this exemption to obtain a free extension of natural gas service. Requiring a 15 year period of occupancy prior to an application for this exemption protects all the ratepayers from misuse of this exemption. Similarly, expanding the exemption to encompass situations where the local distribution company need only install a service line and/or meter between an existing gas distribution main and the customer’s premises could dilute the intent of the rules.

13. COMMENT: We support the State’s commitment to Smart Growth and the efforts to successfully plan for future growth while protecting both the

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environment and quality of life in this state. We also appreciate the continued opportunity to participate in this process to further development of the best possible regulatory structure in support of the State's development and redevelopment goals. (NJNG, ETG, JCP&L).

RESPONSE: The Board appreciates this comment in support of the rules.

Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted repeals, amendments and new rules are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. In addition, while there are many Federal laws relating to the regulated entities and regulated services affected by the proposed amendments and new rules, none relate to the distribution of infrastructure extension costs between the regulated entity and the applicant for service. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for these adopted amendments and new rules.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 8. EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.3 General requirement to provide extensions

(a) – (e) (No change on adoption.)

14.3-8.4 Requirement to put certain extensions underground

(a)-(b) (No change on adoption.)

*** (c) An extension of high-capacity main line electric distribution facilities with a capacity of 4 megavolt amps (MVA) or more may be made overhead.***

***[(c) An extension of electric or telecommunications service to non-residential development shall be made underground if both of the criteria below are met. Portions of the extension that do not meet the criteria may be made overhead:**

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1. The extension will serve non-residential development that does not have such service as of (effective date of this rule); and

2. The extension is located in an area in which the local government with jurisdiction requires that the extension be underground, or in an area in which the regulated entity providing the extension requires that the extension be underground.]*

(d) An extension of electric or telecommunications service to residential development shall be made underground if both of the criteria below are met. Portions of the extension that do not meet these criteria may be made overhead:

1. The extension is located within, and will serve, a development of three or more residential units ***in the same geographic area*** that do not have ***[such]* *electric or telecommunications* service as of (effective date of this rule); and**

2. Either of the following criteria are met:

i. The extension will be placed along streets that were constructed after (effective date of this rule) ***[, or along streets constructed prior to that date which are not already served by overhead facilities]***; or

ii. The extension ***[is of high-capacity main line electric distribution facilities with a capacity of 4 megavolt amps (MVA) or less]* ***will be placed along streets constructed prior to (effective date of this rule), which are not already served by overhead facilities***.**

(e) If a building that would require underground service under ***[(c) or]*** (d) above is located on a lot that abuts an existing street on which overhead facilities are already installed, the building may be served overhead, at the discretion of the regulated entity.

(f) Underground service shall be reasonably equivalent to comparable overhead service, and shall ensure that the customer will receive safe, adequate and proper service* ***[with a minimum]* ***while minimizing the*** difference in cost between overhead and underground service. ***If underground service is required by this subsection, or** ***[]**i**f a*n* *customer]* ***applicant*** desires underground service where it is not required under ***[(c) or]* (d) ***or (e)*** above,** ***[the cost of the underground service shall be distributed in accordance with N.J.A.C. 14:3-8, but the customer shall be responsible for the difference in cost between installing overhead service and installing underground service.]* ***the costs shall be distributed as follows:********

(i) In a designated growth area as defined by N.J.A.C 14:3-8.2, the additional cost for underground extensions of service, over and above the amount it would cost to serve those customers overhead, shall be a nonrefundable contribution in aid of construction paid by the applicant

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according to N.J.A.C 14:3-8.9(h). The remainder of the cost of the service, that is, the amount which overhead service would have cost, shall be shared between the applicant and the regulated entity in accordance with N.J.A.C. 14:3-8.

(ii) In an area not designated for growth, a regulated entities' ability to pay for or contribute financially to extensions is governed by N.J.A.C 14:3-8.5 and N.J.A.C 14:3-8.6.*

[(g) When an extension is installed underground, certain components may be installed above ground if necessary for safety or to provide reasonable access for maintenance. Examples are interconnecting points and pedestals, and electric transformers.]

[(h)] **(g)*** If unusual circumstances would unreasonably delay a regulated entity's ability to provide underground service, the regulated entity may install temporary facilities in whatever manner is most practical under the circumstances. However, the regulated entity shall replace such temporary facilities as soon as practical with permanent underground service in accordance with this subchapter. The cost of the installation **and removal*** of the temporary facilities shall be distributed between the regulated entity and the applicant in the same way as the remainder of the extension costs under this subchapter.

(Recodify (i) – (k) as (h) – (j).)

[(l)] **(k) When an extension is installed underground, certain components may be installed above ground if necessary for safety or to provide reasonable access for maintenance. Examples are interconnecting points and pedestals, and electric transformers.*** *[(Where a trench is to be used for more than one regulated service, the regulated entity is not required to begin work on the underground system until the applicant has contacted all affected regulated entities and arranged for them to coordinate the installation of all services in the trench.]*

SUBCHAPTER 10. TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

14:3-10.7 Calculating the TRIP charge

(a)-(d) (No change on adoption.)

(e) The TRIP charge shall be calculated annually using the following formula:

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(ERLADEP-ADIT) * ATCR * RAF + ERI * DEP + PP

PT

For the purposes of the above formula, the following terms are defined as follows:

1. "TRIP charge" means the charge that the Board authorizes the regulated entity to assess from each applicable customer to pay for approved ERI, as defined at (e)*[4]* *2* below, made under the TRIP;

2.-3. (No change on adoption.)

4. "ADEP" means the total accumulated depreciation that the regulated entity has recovered through TRIP on the ERI. For example:

i. (No change on adoption.)

ii. For the second annual TRIP adjustment, the ADEP would be (ERI made during the first investment year) x DEP (see (e)*[9]* *8* below for definition of DEP); and

iii. (No change on adoption.)

5.-12. (No change on adoption.)

(f) (No change on adoption.)